

HOUSE BILL No. 1421

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-50-2.5.

Synopsis: Death penalty moratorium and fair sentencing study. Prohibits: (1) the state from executing a defendant before July 1, 2012; and (2) a court from issuing an order before July 1, 2012, that requires a defendant's execution to be carried out. Establishes the 15 member fair sentencing study commission to: (1) study and review the use of the death penalty; and (2) submit a report to the governor and the legislative council before January 1, 2012, that contains findings and recommendations made by the commission concerning the death penalty, including recommendations for legislation.

Effective: Upon passage.

Smith V

January 13, 2009, read first time and referred to Committee on Judiciary.

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Introduced

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

HOUSE BILL No. 1421

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 35-50-2.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]:

4 **Chapter 2.5. Death Penalty Moratorium and Study**

5 **Sec. 1. The general assembly finds the following:**

6 (1) The public is increasingly concerned about individuals
7 who are wrongly convicted of murder across the nation and
8 in Indiana.

9 (2) Mistakes in Indiana's death penalty process can
10 undermine public confidence in the criminal justice system
11 because of the unique nature of the death penalty's finality.

12 (3) The execution of an innocent person by the state would be
13 a grave and irreversible injustice.

14 (4) The experience of the state with death penalty cases has
15 been characterized by significant expenditures of money and
16 time.

17 (5) Family members of murder victims deserve any services



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necessary to cope with the loss of their loved ones.

(6) The state must ensure a justice system that is impartial, is equitable, is competent, is accurate, meets the needs of victims' family members, and makes the best use of state resources.

(7) The imposition of the death penalty precludes the pursuit of any principles of reformation even though Article 1, Section 18 of the Constitution of the State of Indiana states, "The penal code shall be founded on the principles of reformation, and not of vindictive justice."

(8) Proven methods of criminal deterrence and rehabilitation suffer for lack of funds while the state's death penalty system uses resources at a much higher rate than the appropriately punitive sentence of life imprisonment without parole.

(9) There are serious and increasing concerns about the fairness of the death penalty caused by demonstrated racial and socioeconomic disparities in sentencing.

(10) The uniqueness of the final act of capital punishment by taking a human life demands the utmost scrutiny from the public and the general assembly.

Sec. 2. As used in this chapter, "commission" refers to the fair sentencing study commission established by section 4 of this chapter.

Sec. 3. (a) Notwithstanding IC 35-50-2-3, IC 35-50-2-9, and IC 35-38-6:

(1) the state may not execute a defendant who was sentenced to death before the effective date of this chapter; and

(2) a court may not issue an order under IC 35-50-2-9(h) that requires a defendant's execution to be carried out not later than one (1) year and one (1) day after the date the defendant is convicted;

after the effective date of this chapter and before July 1, 2012.

(b) Notwithstanding subsection (a), the state may seek a death sentence for murder under IC 35-50-2-9:

(1) after the effective date of this chapter; and

(2) before July 1, 2012.

(c) Notwithstanding subsection (a)(2) and IC 35-50-2-9(h), if a court sentences a defendant to death:

(1) after the effective date of this chapter; and

(2) before July 1, 2012;

after June 30, 2012, the court shall order the defendant's execution to be carried out not later than one (1) year and one (1) day after

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July 1, 2012.

Sec. 4. (a) The fair sentencing study commission is established.

(b) The commission consists of the following fifteen (15) members:

(1) Six (6) members appointed by the governor as follows:

(A) Two (2) members who represent families of murder victims.

(B) Two (2) members who represent religious or ethicist organizations.

(C) One (1) member who represents a civil rights organization.

(D) One (1) member who represents the general public.

(2) Two (2) members of the senate, not more than one (1) of whom may be affiliated with the same political party, to be appointed by the president pro tempore of the senate.

(3) Two (2) members of the house of representatives, not more than one (1) of whom may be affiliated with the same political party, to be appointed by the speaker of the house of representatives.

(4) One (1) member of the judiciary appointed by the chief justice of the supreme court.

(5) The attorney general or the attorney general's designee.

(6) The executive director of the prosecuting attorneys council or the executive director's designee.

(7) The executive director of the public defender council or the executive director's designee.

(8) The president of the Indiana State Bar Association or the president's designee.

(c) The term of a member appointed under this section expires July 1, 2012.

Sec. 5. (a) Each member of the commission who is not a state employee is not entitled to the minimum salary per diem provided by IC 4-10-11-2.1(b). The member is, however, entitled to reimbursement for traveling expenses as provided under IC 4-13-1-4 and other expenses actually incurred in connection with the member's duties as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.

(b) Each member of the commission who is a state employee but who is not a member of the general assembly is entitled to reimbursement for traveling expenses as provided under IC 4-13-1-4 and other expenses actually incurred in connection

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with the member's duties as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.

(c) Each member of the commission who is a member of the general assembly is entitled to receive the same per diem, mileage, and travel allowances paid to legislative members of interim study committees established by the legislative council. Per diem, mileage, and travel allowances paid under this subsection shall be paid from appropriations made to the legislative council or the legislative services agency.

Sec. 6. (a) The commission shall elect a chairperson from its members.

(b) If a vacancy occurs among the appointed members of the commission, the appointing authority shall appoint a qualified person to fill the remainder of the vacating member's unexpired term.

(c) The commission may meet at any time and at any place in Indiana during the calendar year.

(d) The governor shall provide staff assistance as the commission may require.

Sec. 7. The commission shall do the following:

(1) Study the use of the death penalty and determine what policies would guarantee that its application and administration in Indiana are free from bias and error. The study must include a review of the following:

(A) Recommendations made by government commissions that have studied the death penalty in other states.

(B) Academic and government inquiries into the administration of the death penalty at state and national levels.

(2) Review each stage of the death penalty process in Indiana, including pretrial procedures, jury selection, defense, prosecution, trial procedures, postconviction appeals, and clemency procedures and make findings and policy recommendations concerning the following:

(A) The risk of innocent people being sentenced to death or executed. If the commission finds any murder case in Indiana that resulted in:

(i) a wrongful conviction; and

(ii) the imposition of a death sentence, a sentence of life imprisonment without parole, or an excessive fixed term of imprisonment;

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the commission shall look at the factors and characteristics of the case and determine if additional areas of study or policy changes are necessary.

(B) Whether:

(i) the selection of defendants for the death penalty is arbitrary, unfair, or discriminatory in any way, specifically considering the race, geographic and socioeconomic background, and any other relevant characteristics of defendants and victims; and

(ii) there is unfair, arbitrary, or discriminatory variability in the sentencing phase or at any stage of the process.

In determining the presence of unfair biases, the commission shall study both death penalty cases and cases in which the death penalty could have been but was not sought by the state.

(C) Whether there is a significant difference in the crimes of those selected for the punishment of death as opposed to those who receive the punishment of life imprisonment without parole.

(D) The services that exist in Indiana for family members and other loved ones of murder victims and determine if:

(i) these services are sufficient;

(ii) there are additional services provided in other states, and, if so, if these additional services should be provided in Indiana; and

(iii) victims rights and services are provided on an equal basis to all surviving family members regardless of their support for, opposition to, or neutrality on the death penalty.

(E) The cost of the death penalty system, taking into account all expenses from indictment to execution, compared to the cost of imposing the penalty of life imprisonment without parole.

(F) What changes to the death penalty process could:

(i) improve the fairness and accuracy of imposing the death penalty;

(ii) eliminate impermissible racial, ethnic, or geographic bias; and

(iii) prevent the sentencing to death and execution of innocent persons.

(G) Whether the law provides adequate protections for

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defendants with diminished capacity, including defendants who are mentally retarded or mentally ill.

(H) What purposes the death penalty is meant to serve and whether any demonstrable benefit to society exists throughout the history of its use in Indiana.

(3) Submit a report before January 1, 2012, to the legislative council in an electronic format under IC 5-14-6 and to the governor concerning the study and review conducted by the commission under this chapter. The report:

(A) must include findings and recommendations made by the commission under this chapter; and

(B) may recommend legislation to the governor and general assembly based on the findings and recommendation made by the commission.

SECTION 2. [EFFECTIVE UPON PASSAGE] (a) The governor, president pro tempore of the senate, and speaker of the house of representatives shall appoint the members of the fair sentencing study commission under IC 35-50-2.5-4(b), as added by this act, before August 1, 2009.

(b) This SECTION expires August 2, 2009.

SECTION 3. An emergency is declared for this act.

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